land itself. In other words, it is contracts or conveyances which, but for the section, might be held to create real rights in a party to the contract or conveyance which alone are struck at".

With regard to the agreement, his Lordship had this to say:

"It is an agreement on the part of the defendant to transfer to plaintiff the land upon a certain contingency happening — in other words, an executory agreement. It is in fact an agreement to do something in the way sanctioned by the law. It is not an attempt to transfer, but a conditional promise to transfer".

There are other cases which have held that although the transfer of land or any interest therein would be ineffectual to pass the legal estate, the question arises as to whether there would be an enforceable contract. I think it would be sufficient if I would only refer to the Court of Appeal case of *Margaret Chua* v. *Ho Swee Kiew & Ors.*[2] where some of the English and local authorities were neatly considered by Thomson C.J. (as he then was). In the course of his judgment, his Lordship, agreeing with the learned trial judge, said:

"....that although the agreement might be a nullity as a lease it could be, and indeed was, a good enforceable agreement for a lease under which the appellant as registered proprietor had undertaken the obligation to grant a lease".

And at page 176 his Lordship said:

"There is, however, a written contract and in my view it is a binding contract".

In that case the agreement was a binding contract dealing with the loan by the respondent to the appellant (registered proprietor) and obliging the latter to grant the former a lease of the land in question for 25 years.

In the light of these authorities I must consider whether the contract under consideration is an enforceable contract. Defence counsel argued that this court has to look at the contract. He contended that in view of the valuable consideration given to the previous owner it was agreed that the defendant's tenancy would not be disturbed. For my part, I think learned counsel is putting the cart before the horse. The proper question for this court at this point would be to consider whether on the proper construction of the said agreement it was an attempt to pass the interest in the said premises to the defendant. If that was so, it would still be caught by the provisions of the Land Code requiring registration. Reading the agreement as a whole, I would not hesitate to come to the conclusion that the said agreement was indeed an attempt to pass such interest in the said premises to the defendant and is therefore not enforceable. The present case is with a difference and can be distinguished from the Privy Council case of *Haji Abdul Rahman* v. *Mahomed Hassan* and the Court of Appeal case of *Margaret Chua* v. *Ho Swee Kiew & Ors.* In both of these cases the agreements were held to be enforceable on the ground that they were not construed as attempts to pass the lands or interests therein but were mere conveyances for loans on the security of the lands.

Accordingly, the agreement cannot be regarded as an agreement for a lease carrying with it an equitable interest in the said premises. That being the case, the final question to be asked is what kind of interest does the defendant possess, and how can such interest be determined? I would quote a passage from the 26th edition of *Woodfall* on "Landlord and Tenant" at page 308, paragraph 741, which I think bears some relevance for our present purpose. It states as follows:

"A legal estate of freehold cannot be created orally or by mere written agreement (not under seal): a person holding under such an agreement is, subject to any equitable right he may have, a tenant at will".

Following the principle of law as stated in the above passage, I now hold that the defendant has merely a tenancy at will and such tenancy can be determined by a demand for possession. As was stated by Tindal C.J. in *Doe d. Price* v. *Price*[3] which case was referred to with approval by Birkett J. in *Fox* v. *Hunter-Paterson*:[4]

"....anything which amounts to a demand for possession....is sufficient to indicate the determination of the landlord's will".

I would therefore hold that the notice to quit dated 20th December, 1963 is a sufficient demand for possession so as to terminate the defendant's tenancy.

Alternatively, it may be observed that the defendant has admitted that he was a monthly tenant and therefore the plaintiff's notice to quit dated 20th December, 1963, terminating the tenancy on 31st January, 1964, would be an adequate notice.

There will therefore be judgment for the plaintiff as prayed and costs.

*Claim allowed.*

Solicitors: *Shook Lin & Bok; Morris Edgar & Co.*

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## NADCHATIRAM REALITIES (1960) LTD. v. RAMAN & ORS.

[O.C.J. (Ismail Khan J.) August 12, 1965]

[Seremban — Civil Suit No. 26 of 1965]

*Trespass — Whether premises are labourers' quarters or are occupied as tenants at will — Whether labourers occupying quarters after termination of their contract are trespassers — Whether picketing in premises constitute trespass — Employment Ordinance, 1959, s. 15 — Trade Disputes Ordinance, 1949, s. 4.*

*Employment — Labourers' quarters — Occupation of — Whether as servants or tenants at will.*

*Trade disputes — Picketing in premises — Whether trespass.*

The plaintiffs were the owners of a rubber estate and the defendants were employed as labourers and allowed to occupy labourers' quarters on the estate. There was a trade dispute between the plaintiffs and the defendants and the defendants absented themselves from work. The defendants however continued to occupy the quarters and also used some tents and sheds in the estates for the purpose of picketing. The plaintiffs claimed that the defendants' continued occupation of the quarters and occupation of the grounds of the estate constituted acts of trespass and they asked for an order for ejectment, damages and injunction.

**Held:** (1) the defendants had no reasonable excuse when they stopped work and therefore they were in breach of their contract of employment;

(2) in this case on the facts the occupation of the quarters were not bound up with the service of the labourers but was only a matter of convenience for both parties and therefore the defendants were tenants at will;

(3) as the defendants had been served with a writ which was itself a demand for possession, their tenancy at will had been terminated and by continuing to occupy the quarters they were trespassers;

(4) by picketing in the estate and continuing to keep tents and sheds on the plaintiffs' land for the purpose the defendants were also committing acts of trespass;

(5) in the circumstances of the case the plaintiffs were entitled to the reliefs claimed by them.

*Cases referred to:—*

(1) *Gleneagles Hotel Ltd.* v. *Wong Jue Whee & Ors.* [1956] M.L.J. 37.

(2) *Smith & Anor.* v. *Overseers of Seghill* (1875), L.R. 10 Q.B. 422.

(3) *Hughes* v. *Overseers of Chatham* 5 M. & G. 78.

(4) *Dobson* v. *Jones* 5 M. & G. 112.

(5) *Martinali* v. *Ramuz & Anor.* [1953] 2 All E.R. 892.

CIVIL SUIT.

*S. P. Seenivasagam* (*Miss S. Devi* with him) for the plaintiffs.

*Miss P. G. Lim* for the defendants.

**Ismail Khan J.:** The plaintiffs are a company carrying on the business of rubber planters with one Mr. Nadchatiram, P.W.1, as managing director.

In their statement of claim the plaintiffs claim to be the owners of a rubber estate known as the Third Mile Estate comprising an area of 705 acres at Tampin Road, Seremban. It is alleged that the defendants were employed by them as labourers, and that for the proper performance of their duties the defendants were allowed to occupy the labourers' quarters on the estate. It is also alleged that on the 8th October 1964, the defendants by absenting themselves from work without leave and reasonable excuse had terminated their contract of service and that the defendants had without their consent erected tents and sheds on the estate. The plaintiffs claim that the defendants' continued occupation of the said quarters and occupation of the grounds of the estate constituted acts of trespass. They ask for an order for ejectment, damages and injunction.

In their defence the defendants say that they absented themselves from work with reasonable excuse in furtherance of a trade dispute between the plaintiffs and themselves which arose on the 8th October, 1964. As regards their occupation of the labour lines, the defendants allege that they are tenants at will of part of the estate and that such tenancy had not been determined by the plaintiffs. They again allege that their contract of service with the plaintiffs had not been terminated.

At the close of the case for the plaintiffs it was objected by Miss Lim for the defendants that the expression "Third Mile Estate" is ambiguous. She said that according to the plaintiffs the term refers to the 705 acres of rubber land comprised in certificate of title 13335 formerly certificate of title 1617 Mukim of Rasah, District of Seremban, Negri Sembilan, but the plaintiffs have only a 2821/7460 undivided share in the land to which the certificate of title relates, the other co-proprietors being P.W.1 who in his personal capacity owns 4554/7460 share and one Mr. Nagalingam and one Mr. Kathiravelu who as trustees hold 85/7460 share. As the whole area covered by certificate of title 13335 is about 1,865 acres, and as there is evidence that all this area is known to the residents there as the Third Mile Estate, that term cannot be applied exclusively to the plaintiffs' 705 acres. Against this there is the evidence of P.W.1 that while at one time all the land comprised in certificate of title 13335 was known as the Third Mile Estate, in 1957 he had purchased 1,845 acres of the said land for the purpose of fragmentation. After such fragmentation there remained only 705 acres which he sold to the plaintiffs. It is this area of 705 acres which is now the Third Mile Estate and on which the defendants were employed and provided with labour lines. There is no evidence that anyone is operating any other rubber estate in this area as the Third Mile Estate, and what to my mind should finally dispose of Miss Lim's objection is the evidence of P.W.5, Mr. Murphy, representative of Peat, Marwick, Mitchell & Co., the secretaries and treasurers of the Rubber Industry Replanting Board — Fund A. He said that of the 1,865 acres comprised in certificate of title 13335, only 705 acres had been replanted. Refunds of cess were made to the plaintiff company as owners of the Third Mile Estate with an area of 705 acres and that the only claim for refund in respect of the Third Mile Estate was from the plaintiff company.

It was again objected that as the plaintiffs are the owners of an undivided share in the land, the suit is not maintainable unless the other two

co-proprietors are joined. For the defendants it was submitted that although there is no partition, the plaintiffs' share in the land has been demarcated in the plan P12. P.W.1 who is still registered as a co-proprietor has no objection to the plaintiffs proceeding with the action without him, and the other co-proprietors Mr. Nagalingam and Mr. Kathiravelu said in evidence that they had no interest in the 705 acres owned by the plaintiffs, and this is reinforced by their letter to the Rubber Industry Replanting Board wherein they acknowledged that the plaintiffs are the owners of the 705 acres. Mr. Kathiravelu also said that the plaintiffs could sue the defendants without joining him. This objection also fails.

I now come to the question whether the defendants are trespassers. This in turn depends upon the answer to the question whether they are in breach of their contract of service with the plaintiffs and whether they were in occupation of the quarters as servants or as tenants at will. It is agreed that as from the 8th October, 1964, the defendants had ceased to work for the plaintiffs. Mr. Seenivasagam for the plaintiffs contended that they had absented themselves from work without leave and without reasonable excuse. He relied on section 15 of the Employment Ordinance, 1955. It reads as follows:—

> "A contract of service shall be deemed to be broken by the labourer if he is continuously absent from work for more than one day without leave from his employer and without reasonable excuse."

It was argued for the defendants that the defendants stopped work as a result of the situation brought about by the pattern of conduct on the part of P.W.1 from the 2nd to the 8th October, 1964. The accounts differ as to the events preceding the cessation of work by the defendants. Briefly the plaintiffs' story is as follows. On the 2nd October, 1964, two officials of the Negri Sembilan Branch of the National Union of Plantation Workers approached P.W.1 with certain proposals regarding payment of back-pay for his labourers which he refused to discuss as they could not show him any authority from the workers to negotiate. Another reason was that he felt he was paying better wages than the Malayan Planting Industires Employers Association of which the plaintiff company was not a member. On the 5th October, 1964, two union officials held a meeting of the labourers on the estate. On the 7th October, 1964, he was informed by P.W.4, his conductor, that a labourer Gengalu, D.W.7, had stopped them from going to work until he ordered them. He therefore instructed P.W.4 to request D.W.7 to wait for him at the estate office. D.W.7 refused to wait. Later, when asked for an explanation, D.W.7 said he knew what he was doing. He was warned if he interfered with the labourers a report would be made to the police. On the 8th October, 1964, P.W.4 on instructions from P.W.1. did not call D.W.7's name at the muster in the morning as P.W.1 wanted to see him at the office. This meant that he would not be given work that day. It was then that the defendants decided to stop work. They made it clear to P.W.1 that they were not prepared to work without D.W.7. The defendants then started picketing and erected tents and sheds on the estate.

According to the defence, sometime in September, 1964, the labourers had put forward certain demands to P.W.1 for back-pay and other benefits which are set out in their petition D14. P.W.1 refused to discuss them and on the 5th October, 1964, at a meeting of the labourers on the estate, they were informed of P.W.1's reaction to their proposals. There was an election of office bearers of the estate union and D.W.7 was appointed the secretary. P.W.4, the conductor, was present at the meeting. In the evening of the same day, the workers were informed that the muster time for the next day would be 5 a.m. instead of 5.45 a.m. The next morning there was some complaint among the workers about the early hour for the muster. On the morning of the 7th October, 1964, when D.W.7 and D.W.3 took up this matter with P.W.4 they were told that the labourers should go to work but that D.W.7 was asked to remain at the office. He refused and went to his task. On the 8th October, 1964, D.W.7's name was not called at the muster. The rest of the labourers wanted to know the reason. They were told there was no work for D.W.7, but that they could go to work, and that if they disobeyed they would be dismissed.

On a consideration of the evidence and the probabilities, I have come to the conclusion that the truth lies in between the two versions. It is common ground that P.W.1 refused to negotiate with the union officials but, in my opinion, it was because he was not shown any authority by them to negotiate. D.W.3 never showed D14 to him and the two union officials did not do so probably because of the fear that the signatories would be victimised. It seems to me that P.W.1 must have known about the election of the new office bearers at the meeting on the 5th October, 1964. Muster time must have been changed from 5.45 a.m. to 5 a.m. on the 6th October, 1964, which would account for the presence of P.W.1 on the morning of that day at the estate. He admitted it was his first appearance at the muster that year. The labourers, however, did not appear to be unduly perturbed over the change, as no protest was made to him that morning. I do not think that any complaint was made to P.W.4 on the morning of the 7th October, 1964, either by D.W.3 or D.W.7. The

labourers would be interested in the result and there is no evidence of what they were told. The 17th defendant said she was not told anything, D.W.6 did not care to find out and D.W.3 could only say that he spoke to P.W.4. What must have happened was that instead of complaining to P.W.4, D.W.7 stopped the labourers probably because of some mistaken idea that as union secretary he had sufficient authority to ask the labourers to disregard the recent change in their hours of work. When asked for an explanation, it is probable that he told P.W.1 that it was his business. On the 8th October, 1964, P.W.4 was given instructions not to call D.W.7's name as P.W.1 wanted to see him. The rest of the labourers were told they could go to work. They refused unless D.W.7 was given work and they still refused when on the afternoon of the 8th October, 1964, P.W.1 saw each of them individually and asked him to reconsider. As to Miss Lim's suggestion that P.W.1 had by his conduct brought about the incident on the 8th October, 1964, it seems to me improbable that P.W.1 would have resorted to any manoeuvre which must result in the disruption of work on the estate and involve the plaintiff company in serious financial loss. On the contrary, there is evidence of some conciliatory move on the part of P.W.1 on the afternoon of the 7th October, 1964, when he saw the labourers on the estate and asked for their co-operation and on the 8th October, 1964, when he saw each labourer individually and asked him to return to work. It is clear from the evidence that the labourers went on strike for the sole reason that D.W.7 was not given any work. There is no evidence that the strike was over the change in the muster time or over the refusal of the labourers' demands for improved conditions of service. At the meeting on the 5th October, 1964, no decision was arrived at regarding any strike action. Instead, the labourers were advised by the union officials to continue to negotiate afresh with the management.

In my view, the defendants had no reasonable excuse when they stopped work.

In the case of *Gleneagles Hotel Ltd.* v. *Wong Jue Whee & 38 Ors.*[1] the defendants who were members of the hotel service staff in the plaintiff company went on strike on 26th August, 1955. There was evidence that the defendants had given 48 hours notice but the strike took place before the expiration of the period. At page 38 Whitton J. said:—

> "....if the defendants did give notice they clearly terminated their contract since termination of contract is what notice essentially implies, whereas if they did not give notice their cessation of work was, I think, whether immediately or not, a determination of it by breach."

It is true that the latter part of his Lordship's observation which I have underlined is *obiter*, but I respectfully concur with it.

I therefore hold in the present case that the defendants were in breach of their contract.

The next question for determination is whether the defendants occupied the labourers' quarters in the course of their employment as servants or as tenants at will. The principles are set out in the case of *Smith & Anor.* v. *The Overseers of Seghill,*[2] where after referring to two cases, namely: *Hughes* v. *Overseers of Chatham,*[3] and *Dobson* v. *Jones,*[4] Mellor J. said at page 428:—

> "Those cases establish the principles by which we must be governed. Where the occupation is necessary for the performance of services, and the occupier is required to reside in the house in order to perform those services, the occupation being strictly ancillary to the performance of the duties which the occupier has to perform, the occupation is that of a servant. In *Dobson* v. *Jones* the decision was based upon the ground that the surgeon was required to reside in the house for the purpose of thereby enabling him the more readily to perform the services required of him, and it was therefore held that the surgeon occupied not as a tenant but as a servant. On the other hand, in *Hughes* v. *Overseers of Chatham*, the ropemaker was permitted to reside in the house, in part remuneration of his services, and, not residing there for the purpose of performing his duties, he was held to occupy as tenant."

It was argued by Mr. Seenivasagam for the plaintiffs that as the labour lines were in the estate, and as the labourers had to attend muster in the very early hours of the morning as part of their duties, an inference could be drawn that their occupation was necessary to the performance of their duties. In my view, this conclusion is untenable in view of the admission of P.W.4 that the labourers were allowed to live outside the estate, and that some of them were not living in the labourers' quarters. This is a case where, to my mind, the occupation is not bound up with the service but is only a matter of convenience to both parties. The defendants are therefore tenants at will.

It was submitted by Miss Lim for the defendants that their tenancy had not been determined as there was no demand for possession by the plaintiffs, and until the termination of the tenancy the defendants are lawfully in possession. It is true that there was no formal demand for possession but the defendants were served with the writ which is itself a demand for possession. In *Martinali* v. *Ramuz & Anor.*[5] Denning L.J. said at page 893:—

> "It is elementary that a tenancy at will is determined by a demand for possession, not by a notice to quit. These tenancies at will were determined by the issue of a writ claiming possession, which is itself a demand for possession."

I therefore find that the defendants' tenancy has been terminated and that by continuing to occupy the quarters they are trespassers.

It is not denied that the defendants had been picketing and had been using some tents and sheds for that purpose and the point in controversy is the place where these were erected. I am disposed to accept the evidence of P.W.1 that it is a part of the estate marked with a blue cross in P12 and this is borne out by the photographs D34 and D35. The local law on picketing is set out in section 4 of the Trade Disputes Ordinance, 1949, which is as follows:—

"It shall not be unlawful for one or more persons acting on his or their own behalf or on behalf of a registered trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be or the approach to any such house or place

(a) merely for the purpose of peacefully obtaining or communicating information; or

(b) merely for the purpose of peacefully persuading or inducing any person to work or abstain from working:

Provided that if such person or persons so attends or attend in such numbers or otherwise in such manner as to be calculated

(a) to intimidate any person in that house or place; or

(b) to obstruct the approach thereto or egress therefrom; or

(c) to lead to a breach of the peace;

such attending as aforesaid shall be unlawful and shall be deemed to constitute an offence under paragraph (d) of section 3 of this Ordinance."

This is identical in language with section 5 of the Singapore Trade Disputes Ordinance, 1941. In the case of *Gleneagles Hotel Ltd.* v. *Wong Jue Whee & 38 Ors., supra,* Whitton J. held that the words "at or near" in section 5 of the Trade Disputes Ordinance, 1941, cannot mean "in". I respectfully adopt his Lordship's interpretation of those words. For this reason, I hold that by continuing to keep the tents and sheds on the plaintiffs' land the defendants were also committing acts of trespass.

In the result, I find the plaintiffs are entitled to the relief claimed.

I make an order:—

(1) that the defendants and all persons holding through or under them do quit and vacate the labourers' quarters now occupied by them at Third Mile Estate, Tampin Road, Seremban, forthwith;

(2) that the defendants demolish all the sheds and tents erected by them on the said Third Mile Estate and remove therefrom all furniture, fittings, utensils and all materials of whatever nature they may be;

(3) that the defendants do pay damages to the plaintiffs which I assess at $50 in the case of each defendant.

The plaintiffs will have the costs of the action.

*Claim allowed.*

Solicitors: *Kamala Devi & Co.; P. G. Lim.*

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## DOSHI v. DOSHI

**[O.C.J. (Winslow J.) September 2, 1965]**

**[Singapore — Divorce No. 36 of 1965]**

*Husband and wife — Divorce — Jurisdiction — Marriage solemnised outside Singapore in 1957 — Women's Charter, 1961 ss. 82(1) & 166.*

*Legislation — Revised Edition of the Laws (Annual Supplements) Ordinance, 1956, ss. 4 & 8 — Conclusiveness of Annual Supplement.*

The petitioner, a Singapore citizen with a Singapore domicile, asked for dissolution of his marriage with the respondent which took place in Ipoh according to Hindu rites in May 1957 on the ground of her desertion since December 1960. The divorce was uncontested and the petitioner proved desertion. The only question was whether his marriage to the respondent was a marriage which the court had jurisdiction to dissolve because the Annual Supplement to the Laws of Singapore for 1961 issued in 1964 had altered section 166 of the Women's Charter as originally enacted, by limiting the application of that section to such marriages as are solemnized "in Singapore" before the "coming into operation" of the Charter, i.e. September 15, 1961.

For the petitioner it was argued that in adding the words "in Singapore" to section 166, Women's Charter in the Annual Supplement, 1961, the State Advocate-General had altered the law and thereby exceeded his powers under section 4 of the Revised Edition of the Laws (Annual Supplement) Ordinance, 1956. The words of section 8, it was contended, were ineffective to exclude a review of the Annual Supplement on jurisdictional grounds. It was further argued that the case of the *Reference under section 325 of the Land Code*[1] was wrongly decided to the extent that it sought in effect to equate a resolution of the Federal Council with an Enactment passed in due form. The learned judge then adjourned the petition for further argument stating that he would like to hear the State Advocate-General before deciding the issue.

**Held:** section 8(1) of the Revised Edition of the Laws (Annual Supplements) Ordinance in effect, provides for the "sanctity" of an Annual Supplement only in respect of Ordinances enacted in the year immediately preceeding the date of its issue. As the 1961 Annual Supplement was issued only in 1964 no reliance could be placed on section 8 for the contention that it shall be "without any question whatsoever in all courts of justice and for all purposes whatsoever the sole and only proper Statute Book of the State." Therefore recourse can be had only to the Ordinance as originally enacted which does not, in section 166, contain the words "in Singapore". The marriage was therefore deemed to be registered under the provisions of sections 82(1) and 166 of the Charter and a decree *nisi* should be pronounced to be made absolute after the expiration of 3 months.

*Case referred to:—*

(1) *Reference under section 238 of the Land Code* [1937] M.L.J. 9.

In addition, the following cases were cited in argument: *Andrews* v. *Mitchell* [1905] A.C. 78; *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 347; *Minister of Health* v. *R., ex p. Yaffe* [1931] A.C. 494; *The King* v. *Electricity Commissioners* [1923] 1 K.B. 171 and *Bowles* v. *Bank of England* [1913] 1 Ch. 59.

DIVORCE.

*Punch Coomaraswamy* for the petitioner.

*Lee Boon Siong* for the respondent.

*Ho Thian Cheh* for the State Advocate-General, *amicus curiae.*